**15 The Federal Courts**

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Associate Justice Anthony Kennedy is often the swing vote on a Supreme Court that is closely divided philosophically.

**What We Learned**

***1. What role do courts and judges play in the policymaking process?*** Courts make policy by interpreting the law and the Constitution. Courts interpret the Constitution by exercising judicial review. Some justices believe in strict construction, a narrow interpretation of the Constitution, while others favor loose construction, a broader interpretation. Justices also disagree about their role. Judicial activism is the charge that judges are going beyond their authority by making the law and not just interpreting it. Judicial restraint is the concept that judges should defer to the policymaking judgment of the legislative and executive branches of government unless their actions clearly violate the law or the Constitution. Many political scientists believe that all judges consider that the Constitution is a charter of fundamental principles that must be upheld but that liberal and conservative judges disagree as to what those principles are.

Over time, the Supreme Court shifts between periods of strict and loose construction, greater or less activity, decisions supporting a strong national government or states’ rights, and rulings of a liberal or conservative nature. In recent years, the Court has had a close partisan balance, issuing some liberal and some conservative rulings.

***2. How is the federal court system organized?*** The federal court system has three layers. The U.S. District Courts are trial courts, conducting all federal criminal and civil trials except those heard by the U.S. Court of Federal Claims and the U.S. Court of International Trade, which are specialized trial courts. The U.S. Courts of Appeals hear appeals from the federal trial courts and administrative agencies. These courts may affirm, reverse, or modify a lower court ruling. The U.S. Supreme Court, the highest court in the land, has the authority to try a limited range of cases but in practice is almost exclusively an appellate court.

The president appoints federal judges with senate confirmation, following the custom of senatorial courtesy. The overwhelming majority of district court nominees are approved, although the confirmation process is sometimes lengthy. Both the White House and the Senate take more care with courts of appeals nominees than with district court nominees. All federal judges serve for life “with good behavior.”

***3. How does the Supreme Court function?*** The Supreme Court is the highest court in the land. Congress has set the size of the court at nine—a chief justice, who presides, and eight associate justices. In practice, the Supreme Court is exclusively an appeals court, hearing cases brought to it from the courts of appeals and the highest court in each state, usually a state supreme court. The president fills vacancies on the Supreme Court by appointment, pending Senate confirmation. The confirmation process is often highly political. Similar to other federal judges, Supreme Court justices serve for life “with good behavior.”

The justices select which cases to hear among the thousands that are appealed to it. While the Court settles some cases quickly with per curiam opinions, most cases involve the justices reading briefs and hearing oral arguments. After an initial vote, the chief or the most senior justice in the majority writes or assigns the majority opinion. Justices may also write concurring and dissenting opinions. Although the Supreme Court decides cases by majority vote, many observers believe that the strength of a ruling depends on the level of agreement among the justices. After the Supreme Court sets policy, lower courts adapt the policies to particular circumstances. Government agencies and private parties implement the policies. Supreme Court decisions have their greatest impact when the position enjoys strong support from other branches and units of government, interest groups, and public opinion.

***4. What factors affect the policymaking power of the courts?*** Political scientists who study the judicial branch identify a number of restraints on the power of the federal courts. Courts will eventually reflect the will of the voters because judges are appointed and confirmed by elected officials. Judicial decisions can be reversed by changing the law or the Constitution. Furthermore, courts are reactive institutions in that they must wait for a case before they can rule and they cannot enforce their own decisions.

**Tips for Success**

**Take advantage of tutoring assistance:** Most colleges offer tutoring help, at least in reading and writing. Identify how to access assistance and take advantage of it.

**Key Terms**

**Affirm**

the action of an appeals court to uphold the decision of a lower court

**Amicus Curiae (Friend of The Court) Brief**

written legal arguments presented by parties not directly involved in the case, including interest groups and units of government

**Appeal**

the taking of a case from a lower court to a higher court by the losing party in a lower-court decision

**Certiorari (Cert)**

the technical term for the Supreme Court’s decision to hear arguments and make a ruling in a case

**Civil Case**

a legal dispute concerning a private conflict between two parties individuals, corporations, or government agencies

**Concurring Opinion**

a judicial statement that agrees with the Court’s ruling but disagrees with the reasoning of the majority opinion

**Conference**

a closed meeting attended only by the members of the Court

**Constitutional Law**

law that involves the interpretation and application of the Constitution

**Criminal Case**

a legal dispute dealing with an alleged violation of a penal law

**Dissenting Opinion**

a judicial statement that disagrees with the decision of the Court’s majority

**In Forma Pauperis**

the process whereby an indigent litigant can file an appeal of a case to the Supreme Court without paying the usual fees

**Judicial Activism**

the charge that judges are going beyond their authority by making the law and not just interpreting it

**Judicial Restraint**

the concept that judges should defer to the policymaking judgment of the legislative and executive branches of government unless their actions clearly violate the law or the Constitution

**Judicial Review**

the power of courts to declare unconstitutional the actions of the other branches and units of government

**Jurisdiction**

the authority of a court to hear a case

**Legal Brief**

a written legal argument

**Loose Construction**

a doctrine of constitutional interpretation holding that the document should be interpreted broadly

**Majority Opinion**

the official written statement of the Supreme Court that explains and justifies its ruling and serves as a guideline for lower courts when similar legal issues arise in the future

**Original Jurisdiction**

the set of cases a court may hear as a trial court

**Per Curiam Opinion**

an unsigned written opinion of a court

**Remand**

the decision of an appeals court to return a case to a lower court for reconsideration in light of an appeals court decision

**Rule of Four**

a decision process used by the Supreme Court to determine which cases to consider on appeal, holding that the Court will hear a case if four of the nine justices agree to the review

**Senatorial Courtesy**

the custom that senators from the president’s party have a veto on judicial appointments from their states

**Statutory Law**

law that is written by the legislature

**Strict Construction**

a doctrine of constitutional interpretation holding that the document should be interpreted narrowly

**Test Cases**

lawsuits initiated to assess the constitutionality of a legislative or executive act

**Trial**

the formal examination of a judicial dispute in accordance with law before a single judge

**Writ of Habeas Corpus**

a court order requiring that government authorities either release a person held in custody or demonstrate that the person is detained in accordance with law

**Discussion Questions**

1. What is the difference between strict and loose construction?

2. Describe the structure of the federal court system, including the jurisdiction of and judicial selection process for each level.

3. On what basis does the president select justices for the Supreme Court? What factors influence the likelihood that the Senate will confirm a Supreme Court nominee?

4. What is the process for the Supreme Court to decide a case?

5. What factors influence the strength of a Supreme Court decision?

**Interactive Activity**

**Simulation: You Are a Clerk to Supreme Court Justice Judith Gray**

The Supreme Court carries out judicial review, deciding what laws and actions are constitutional, by carefully selecting the cases the justices hear -- basing their decisions on earlier precedents. How does the Supreme Court decide to hear a case? Which types of cases are worthy of debate before the high court? What influences impact the Supreme Court decision making process? In this activity, you will examine these and other issues as a clerk to Supreme Court Justice Judith Gray. Your primary role will be to filter the various cases by evaluating their merit based on precedent, so Justice Judith Gray knows which cases are worthy of debate in front of the full court. In the process you will learn about the responsibilities of the law clerk in the U.S. Supreme Court, identify the types of cases Supreme Court justices hear, comprehend the role of legal reasoning in resolving legal conflicts, and identify the importance of precedent and judicial review.

[View Simulation](http://media.pearsoncmg.com/long/long_longman_media_1/2008_raised/Player/sim.youareaclerktosupremecourtjustice.html)

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Author Neal Tannahill discusses the most important concepts in this chapter

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